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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SCOTT W. HUMPHREYS,

11 Plaintiff,

12 v.

13 LUKE BURGHER, et al.,

14 Defendants.

CASE NO. 3:18-cv-05736-RJB-JRC

ORDER ADOPTING REPORT AND
RECOMMENDATION

15 The Court, having reviewed the Report and Recommendation (“R&R”) of Magistrate
16 Judge J. Richard Creatura (Dkt. 77), Defendants’ Objections to the R&R (Dkt. 78), and the
17 remaining record, does hereby find and **ORDER** that the R&R is **ADOPTED**. Defendants’
18 Third Motion to Dismiss (Dkt. 70) is **GRANTED, IN PART**, and **DENIED, IN PART**: all
19 parties and all claims, except for Plaintiff’s Eighth Amendment claim against Defendant
20 Burgher, are dismissed with prejudice and without leave to amend.

21 With respect to Plaintiff’s Eighth Amendment claim against Defendant Burgher,
22 Defendants argue, in part, that Plaintiff failed to state a claim because Defendant Burgher’s
23 alleged conduct, if true, was only an isolated instance of neglect and did not rise to the level of
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1 deliberate indifference—a required element of Plaintiff’s claim. *See* Dkt. 78 (citing, e.g., *Jett v.*
2 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1060
3 (9th Cir. 1992) (“If the harm is an ‘isolated exception’ to the defendant’s ‘overall treatment of
4 the prisoner [it] ordinarily militates against a finding of deliberate indifference.”)). Applying the
5 liberal standards applicable at this early stage of the proceedings, as set forth in the R&R,
6 Plaintiff’s allegations concerning the nature of Defendant Burgher’s response and the seriousness
7 of Plaintiff’s medical needs are adequate to survive dismissal at this time.

8 The Clerk is directed to send uncertified copies of this Order to Magistrate Judge J.
9 Richard Creatura, all counsel of record, and any party appearing *pro se* at said party’s last known
10 address.

11 Dated this 19th day of March, 2020.

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13 ROBERT J. BRYAN
14 United States District Judge